



the beach and showering well afterward.

The researchers plan to turn their attention next to yeast and nematode concentrations in the sand and to examine beach behavior, especially among children, that might pose a higher risk of illness.

News Headline: BRISTOL BAY: Amid lobbying push, EPA defends its Pebble mine review |

Outlet Full Name: Greenwire

News Text: U.S. EPA is defending its review of large-scale development in Alaska's Bristol Bay watershed amid strong concerns from state leaders, including Attorney General Michael Geraghty.

At issue is the controversial Pebble Limited Partnership's gold and copper mine in southwestern Alaska, which could become one of the largest in the world. Opponents worry the project could hurt tourism and a valuable salmon fishery.

In a recent letter, Geraghty questioned EPA's legal authority to conduct the assessment, since the company has yet to submit permit applications (Greenwire, April 3).

But in another letter earlier this month, EPA Region 10 Administrator Dennis McLerran said the Clean Water Act gave him the authority to establish programs and conduct research for pollution prevention. He also offered the state an olive branch by agreeing to meet to discuss concerns.

"It is very important to me, personally, and to the agency as a whole that the EPA work with the state on the Bristol Bay Watershed Assessment and understand your concerns," McLerran wrote. "From the beginning of the draft assessment process, the EPA has reached out to the state to discuss our approach to better understanding the Bristol Bay resource and to seek your input and involvement at every step along the way."

Groups, including Alaska Native tribes, have been at odds over EPA intervention and a possible pre-emptive Clean Water Act permit veto of the project.

"In order to give due consideration to these conflicting requests," McLerran wrote, "the EPA decided to collect and evaluate available scientific information on Bristol Bay fisheries and their vulnerability to large-scale mining development."

With the draft watershed assessment scheduled for release next month and peer review and public meetings planned in its wake, both opponents and supporters of the mine have intensified their lobbying efforts.

The Pebble Partnership has touted the attorney general's letter and said EPA's assessment might lead to a veto of the project, which state and company officials call illegal and unprecedented (Greenwire, Feb. 9). The agency is not discounting the possibility of such an action.

42 meetings in 2 days

This week, 40 hunting and fishing leaders from 17 states came in Washington, D.C., to voice support for EPA's study and a possible veto. The activists, led by Trout Unlimited, met with White House environmental staffers and EPA Administrator Lisa Jackson.

"The message was, number one, thank you for what you are doing," Rick Halford, a former GOP leader in the Alaska Senate, said in an interview. "Lisa Jackson, I have met with her in Dillingham [Alaska] twice; we have seen a real response and listening."

The group also met with lawmakers, including members of the Alaska delegation, who have spoken out against an EPA veto before the permit process begins.

"They support the science," Halford said of the Alaska lawmakers. "That's a starting point. And I think the science needs to lead to the right conclusion, and I am confident that it will."

"This is approaching a decade of consideration and rhetoric without a permit application," he added. "EPA has the ability to lay out

some conditions that at least would be sideboards."

The anti-Pebble activists had more than 40 meetings in two days. They also delivered a letter, signed by hundreds of sporting organizations, in favor of the Obama administration's decision to block the mine.

In London, the Natural Resources Defense Council will deliver 400,000 signatures against the mine to Anglo American PLC shareholders during the company's annual meeting tomorrow. Anglo American is one of Pebble's backers. NRDC has also taken out full-page ads in The New York Times and Financial Times newspapers.

Mine opponents say Bristol Bay supports 12,000 commercial fishing and industry jobs, plus 800 sport fishing and tourism jobs. The Pebble Partnership said the mine would support year-round jobs in troubled areas and pump in \$620 million in direct and indirect employment spending.

Pebble spent more than \$400,000 in Washington, D.C., lobbying last year, the Center for Responsive Politics reported. Trout Unlimited has spent about \$280,000 on Pebble and other conservation activities.

"We get one bite at this apple," said Gaspar Perricone, co-director of the Colorado-based Bull Moose Sportsmen's Alliance. "And when the resource is gone, it's gone."

News Headline: Chesapeake Bay gets D+ in new health report card |

Outlet Full Name: Hartford Courant - Online

News Text: BALTIMORE —

Heavy rains and a hot summer harmed the Chesapeake Bay's health last year, earning it the second worst grade on a yearly report card issued Tuesday by the University of Maryland's Center for Environmental Science.

The center gave the bay a D+ in 2011, scoring only slightly better than in 2003, the worst year for bay health since the assessments began in 1986.

Heavy spring and fall rains washed pollutants and sediments into the bay, and a hot, dry summer spurred algae blooms that lower oxygen levels.

Flood waters from Tropical Storm Lee brought up to an inch and a half of sediment into the upper bay. Meanwhile, water clarity continued to decline along with losses in bay grasses.

Only two regions — the lower Western Shore of the bay, which got a C, and the Patapsco and Back Rivers improved, but still got a D-. The rest declined or remained the same.

Virginia's Rappahannock, for example, went from a C- to a D+ as grasses suffered significant declines. The Potomac River remained at a D, suffering declines in water quality but not enough to change its grade.

The Patuxent and Elizabeth rivers received failing grades. The failing grade was the first for the Elizabeth, which has been polluted by industry and shipyards, and scored a grade of 0 for three indicators.

Last spring, the bay got 42 out of 100 possible points, down from 46 the year before and the first drop in four years.

Rains carry sediments that can cloud water and bury bay grasses as well as pollutants such as nitrogen and phosphorus that can lead to oxygen-robbing algae blooms.

Last year, heavy spring flows and two fall storms "brought a huge amount" of pollution and sediment into the bay, said Caroline Wicks, a UMCES project manager who presented the results.

The weather this year has been cooperating so far with dry weather that hasn't washed much pollution into the bay, Wicks said.

"Hopefully, that means we'll have better scores this coming summer. However, with the warmer air temperatures we might have another hot, dry summer," Wicks said.

Nicholas DiPasquale, director of the federal Environmental Protection Agency's Chesapeake Bay Program, said the bay had received what he considered a failing grade in the report card, but also noted the report card "gives a snapshot in time."

"We also have to look at the long-term, and we see a lot of positive indicators," DiPasquale said.

A recent study found that over the past 60 years the frequency duration of low oxygen dead zones in the bay has decreased and the large Susquehanna Flats beds of grasses in the northern bay survived last fall's rains and flooding relatively unscathed — signs that restoration efforts building resiliency back into the bay's ecosystem.

However, DiPasquale said the bay was at a critical point in the EPA's restoration strategy and the federal, state and local governments "need to move from planning to implementation" of further pollution reduction programs as proposed.

William Dennison, vice president for science applications at UMCES, said thinking locally is the key to bay restoration.

"What we're seeing is that the bay as a whole has some issues, but if we can work at the smaller scale, the local streams and waterways, improve those, then we'll eventually filter into the tributaries and the bay as a whole, and see the report card scores for the bay improve," Dennison said.

News Headline: Impaired waters list up to 330 |

Outlet Full Name: Omaha World-Herald - Online

News Text: LINCOLN (AP) - Federal regulators have approved a Nebraska list that raises the number of impaired waters to 330 in the state.

The Environmental Protection Agency said that the Nebraska Department of Environmental Quality submitted a list that removed 21 bodies of water and added 92, bringing the total to 330.

The list is required of each state by the federal Clean Water Act. The act requires the EPA to review the state lists to determine whether the states reasonably considered available water quality data.

The EPA says the lists set priorities for reducing sources of water pollution.

A Nebraska water body is placed on the list when pollutants prevent the lake, river or stream from being used for recreation, agricultural water supply and maintaining aquatic life.

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Site map

News Headline: WETLANDS: Obama proposal would resurrect policy that industry blocked under Bush |

Outlet Full Name: Greenwire

News Text: In 2006, developers, mining companies and agribusinesses convinced the George W. Bush administration to scale back a proposal that would have widened federal protections for wetlands and waterways in the wake of a muddled Supreme Court ruling

on Clean Water Act enforcement.

But just before the release of the regulatory guidance, an industry attorney who had snared a leaked copy objected in emails to the White House.

The Bush administration pulled back the proposal, and the White House Council on Environmental Quality launched a nine-month review. When the guidance was finally released in June 2007, its interpretation of federal regulatory authority was narrower than what U.S. EPA and the Army Corps of Engineers had proposed.

Now, the Obama administration is reviewing another Clean Water Act enforcement guidance that would not only replace the 2007 policies but also revive language that industry groups killed in the Bush years.

And there's a new lobbying battle under way, with environmentalists fighting to preserve the language and industry representatives pushing to have it struck.

Groups on both sides have pressed their case in at least 12 meetings with the White House in the past six weeks. More than two dozen industry representatives met last week with officials from the Office of Management and Budget and other agencies.

"There must have been a third of the GDP represented in that room," recalled Don Parrish, senior director of regulatory relations for the American Farm Bureau Federation and one of the officials present.

At the heart of the battle is language that provides protection for small, seemingly isolated wetlands and waters.

The language tries to address Justice Anthony Kennedy's written opinion in the Supreme Court's 2006 *Rapanos v. United States*. The Clean Water Act explicitly protects waterways that either are "navigable" or, as Kennedy wrote, share a "significant nexus" with one that is (Greenwire, Feb. 7, 2011).

Environmentalists and conservationists say Kennedy would offer protection to "non-navigable" waters if they could be shown to significantly affect the health of a navigable waterway.

For example, they say, dumping fill material or wastes into a tiny creek might have little impact on the large river into which it flows. But dumping waste into several similar creeks across the watershed would have a significant, cumulative impact, they say, so all those creeks deserve protection.

This, they say, is the "aggregation" principle.

"Even the Bush administration initially got it right and recognized that you had to treat all of the waters that are like each other in a watershed the same," said Joan Mulhern, senior legislative counsel for Earthjustice. "When the polluters complained, they took that out, and what the Obama administration is doing is fixing that problem."

But industry attorneys contend that aggregation language mischaracterizes Kennedy's words and seeks to give the federal government broad authority over all waters, regardless of whether a "significant nexus" exists.

"It's the one remaining theory that would kick jurisdiction wide open to cover even isolated waters," said Deidre Duncan, an attorney for the Waters Advocacy Coalition, an industry group. "They are pushing for the broadest, most extreme theory of what aggregation means so that truly isolated waters can come into jurisdiction."

#### Vigorous debate

To be sure, aggregation is not the only part of the proposed guidance that's at issue for industry and environmentalists.

Industry groups argue that the proposed guidelines would give protection to ditches that connect to navigable waterways, and have a chilling effect on the business community.

"We have some grave concerns there because we think there are a lot of unintended consequences in those proposals, in terms of jobs and the economy," Parrish said.

But aggregation language is without a doubt the provision that could bring the largest swath of streams and wetlands under federal protection.

Attorneys for environmental groups cite three sections of Kennedy's Rapanos decision to support the principle. In the first, Kennedy notes "concern" about non-navigable waters' "aggregate effects on national water quality."

In the second, Kennedy writes that wetlands should be protected "if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect" the integrity of navigable waters.

Finally, greens say, Kennedy asserts that regulators may choose to identify "categories of tributaries" that are significant enough that adjacent wetlands should be considered navigable.

Some of the language in the Obama proposal that establishes aggregation for "waters" borrows almost word for word from the second excerpt of Kennedy's decision. But industry attorneys point out that Kennedy specifically refers to "wetlands." Thus, they say, the aggregation concept should only be applied, if at all, to wetlands -- not tributaries.

Industry attorney Virginia Albrecht raised this issue several times in emails with the Bush administration in 2006, urging officials to strike the aggregation language from their draft proposal.

"First, if it is going to be used at all, it should apply only to wetlands, not to tributaries," Albrecht wrote in an email that environmental groups later obtained through a public records request. "Kennedy referenced this 'similarly situated' notion twice, and then only in the context of wetlands."

Albrecht, who didn't respond to a request for comment for this story, also wrote that projects should be reviewed case by case, using a "two-step" process, to see if they meet the tests set forth in Rapanos.

She added, using bold typeface for emphasis: "The idea is **NOT** that you add up all the wetlands in the region and see if cumulatively they have a significant effect on traditional navigable waters."

#### Regulatory confusion

Legal experts on both sides agree that the Supreme Court muddled the Rapanos decision and left the issue open to various interpretations.

But for regulators, the Bush guidance created more of a mess.

Nine months after the Bush guidance was released, EPA's enforcement chief reported that the agency had been forced to drop 347 cases and delay 147 others, according to a 2008 internal agency memo from then-enforcement chief Granta Nakayama.

The "largest burden," Nakayama wrote, stems from the "implied presumption of non-jurisdiction for the most common types of waters in our country" that could only be overcome by a resource-intensive "significant nexus analysis" as described in the guidance.

"The Rapanos decision and the resulting guidance have created uncertainty about EPA's ability to maintain an effective enforcement program with respect to other Clean Water Act obligations," he continued. "This creates uncertainty for EPA and the regulated community as to whether there has been a violation of the Act."

More recent EPA enforcement statistics indicate that the trend continued into the Obama administration (Greenwire, Oct. 25, 2010).

Industry and environmentalists, as well as the Supreme Court, have called on EPA to take the initiative to clarify the extent of federal jurisdiction by launching a formal rulemaking process.

A guidance, unlike regulation, can be issued by an agency at any time. A rulemaking is a far more cumbersome process that requires taking extensive public comment and results in policy that can be challenged in court.

The Obama administration has said it intends to launch a rulemaking after finalizing its "interim" guidelines.

But players on both sides of the debate are skeptical, noting that the Bush administration offered similar assurances but never delivered -- despite warnings about the need for a rulemaking.

In an email to Bush administration officials on Sept. 21, 2006, Albrecht addressed the issue of guidance versus rulemaking on such a complicated issue.

"Don't deal with it at all in the guidance," Albrecht wrote. "After all, it's only Guidance, and 'interim' at that. ... In fact you may recall that my first reaction when you mentioned to me was that this is a subject that should be dealt with through rulemaking. It is so complex."

Antonio Bravo  
Office of Water  
US Environmental Protection Agency  
Tel: 202-566-1976



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